

LMB

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today
(1) was **not** written for publication in a law journal and
(2) is **not** binding precedent of the Board.

Paper No. 33

UNITED STATES PATENT AND TRADEMARK OFFICE

MAILED

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

AUG 23 2000

PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte EUGENE P. GOLDBERG and JAMES W. BURNS

Appeal No. 1998-2824
Application 08/485,832

HEARD: May 17, 2000

Before ABRAMS, MCQUADE, and JENNIFER D. BAHR, Administrative
Patent Judges.

ABRAMS, Administrative Patent Judge.

DECISION ON REHEARING

This case comes before us again on request for rehearing of our decision of May 31, 2000, wherein we sustained the examiner's rejection of claims 11 and 13 under 35 U.S.C. § 112, second paragraph, and did not sustain the rejection of claims 11 and 13 under 35 U.S.C. § 103.

The request for rehearing is DENIED.

On July 28, 2000, the appellants filed a paper captioned as an amendment, which was followed on July 31, 2000, by a paper captioned as a request for rehearing. The earlier paper began with the statement that the Board "please reconsider the above-captioned application in the light of the following amendments and remarks." The second requested that we "reconsider the above-captioned application in the light of the proposed amendments and remarks submitted by the Amendment of July 28, 2000."

At the outset, we point out that while the offering of July 28, 2000, was titled as an amendment and directed us to "the following amendments," there were, in fact, no amendments in the body of the paper or attached thereto. The paper merely consisted of three pages of comments as to why the proposed amendments would overcome the two rejections that were before us on appeal, and upon the relevance of five U.S. Patents, copies of which were attached.¹

¹ These were the same five patents the appellants presented to us with a SUPPLEMENTAL REPLY BRIEF at the oral hearing on this case, which paper we refused to consider on the grounds that it failed to comply with 37 CFR § 1.193(b)(1) or, in the

(continued...)

The request for rehearing is denied because it fails to comply with 37 CFR § 1.197, which states that a request for rehearing "must state with particularity the points believed to have been misapprehended or overlooked in rendering the decision and also state all other grounds upon which rehearing is sought." Even considering both of the recently filed papers as together constituting the request for rehearing, this the appellants have not done. They have not taken issue with our decision in any sense, but appear to be attempting to amend the claims at this late stage in the proceedings under the guise of a request for rehearing.

Therefore, while we have reviewed the contents of the two above-identified papers, they have not convinced us that our

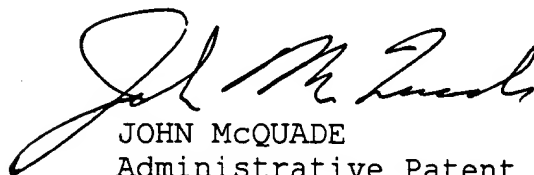
¹(...continued)
alternative, with 37 CFR § 1.195 (Paper No. 30, pages 4 and 5).

decision of May 31, 2000, should be modified.

DENIED



NEAL E. ABRAMS
Administrative Patent Judge



JOHN McQUADE
Administrative Patent Judge



JENNIFER D. BAHR
Administrative Patent Judge

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Appeal No. 1998-2824
Application No. 08/485832

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